

# **EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MILITARY MEMBERS**

## **(The Uniform Services Employment and Reemployment Rights Act)**



### **ANDREWS LAW CENTER**

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The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) provides reemployment protection and other benefits for veterans and employees who perform military service.

#### **WHO IS COVERED BY USERRA?**

USERRA protection applies to nearly all employees who perform military service, including active duty, active duty for training, inactive duty training (such as drills), initial active duty training, and funeral honors duty. USERRA is applicable to all private employers, states, and the federal government.

#### **USERRA PROTECTIONS**

USERRA prohibits employers from discriminating against employees because of past, present, or future military service. Specifically, an employer cannot deny initial employment, reemployment, retention in employment, promotion, or any benefit of employment because of a person's military service obligations. Additionally, an employer cannot retaliate against a person for attempting to enforce his or her USERRA rights.

#### **REEMPLOYMENT**

USERRA requires employers to reemploy military members returning from military service in the jobs they would have attained had they not left because of military service, with the same seniority, status, and pay. Employers must make reasonable efforts to qualify military members for reemployment. Employers must also make reasonable efforts to accommodate a service-connected disability.

The employer must reemploy military members returning from military service if the following requirements are met:

- The military member was absent from the civilian job because of military service;
- The military member gave advance notice to the employer that he or she was leaving because of military service (there are certain exceptions);
- The military member's cumulative military service did not exceed 5 years;
- The military member's active duty did not end under dishonorable or other punitive conditions; and
- The military member reports back to the civilian job in a timely manner or submits a timely application for reemployment.

#### **REPORTING BACK TO WORK**

If the military service was 30 days or less, the military member must report back to work on the first regularly scheduled work period after the completion of military service and time required to require home safely, plus an 8-hour rest period. If this is impossible or unreasonable, then as soon as possible.

If military service is 31-180 days, the employee has 14 days after the completion of military service to apply for reemployment. If this is impossible or unreasonable, then as soon as possible.

If military service is 181 days or more, the employee has 90 days after completion of military service to apply for reemployment.

All of these deadlines can be extended up to 2 years to accommodate a period during which the military member was hospitalized for or recovering from a service-connected injury or illness.

#### **VACATION/LEAVE TIME**

Some employers give employees paid military leave. For example, federal employees have a right to 15 days of paid military leave each fiscal year. Such rights are independent of USERRA. Some employers prefer for employees to use vacation days or paid leave to perform military training. Employees have the right to use "vacation, annual, or similar leave with pay" before beginning military service. The decision whether to take such leave is the employee's. The employer cannot require the employee to do so.

## **WAIVER OF RIGHTS**

An employer may ask a departing military member to sign a statement saying the member does not intend to return to the civilian job, or a more limited waiver of the member's right to seniority and/or non-seniority benefits. Despite such a waiver, a military member never gives up his or her rights to reemployment, nor the right to be treated as continuously employed for seniority purposes upon return to the job. A statement of non-return, however, does waive non-seniority benefits. To be effective, a waiver must be made with full knowledge of the rights the military member is giving up, and the employer bears the burden of proof on this issue. Signing such a waiver will almost never be in a military member's best interest.

## **EMPLOYEE BENEFITS DURING MILITARY SERVICE**

USERRA gives you the right to elect continued health insurance coverage for yourself and dependents during periods of military service. While family members of Guard and Reserve members called to active duty for more than 30 days are eligible for TRICARE benefits the day their military sponsor mobilizes, TRICARE does not cover family members for tours of 30 days or less, so it makes sense for most military members with dependents to continue private family member coverage for tours of up to 30 days.

USERRA gives you and your previously covered dependents the right to immediate coverage upon return to your civilian job. There can be no waiting period and no exclusion of preexisting conditions (other than for those conditions determined to be service-connected). The right does not depend on your having chosen to continue that coverage during your service.

To the extent that your employer offers other non-seniority benefits (e.g. holiday pay or life insurance coverage) to employees on furlough or leave of absence, the employer is required to provide those same benefits to you during your period of military service. If the employer's treatment of persons on leave of absence varies according to the kind of leave (jury duty, educational, etc.), then the comparison should be made with the employer's most generous form of leave.

## **ASSISTANCE & ENFORCEMENT**

The Veterans' Employment and Training Service (VETS), United States Department of Labor, will assist persons claiming rights under USERRA, including persons claiming rights with respect to the federal government as a civilian employer. Employers can be ordered to comply with the law and to compensate you for lost pay, including interest. You can find contact information for your local VETS office by visiting, <http://www.dol.gov/vets/aboutvets/contacts/main.htm#RegionalStateDirectory>.

The National Committee for Employer Support of the Guard and Reserve (ESGR) provides representatives who mediate re-employment issues between former military members and their civilian employers through its Ombudsmen Services Program. You can contact ESGR at 1-800-336-4590. In addition, you can visit ESGR's website at <http://www.esgr.org>.

If you have questions, please schedule an appointment with a legal assistance attorney by calling (301) 981-2042.